

## Summary of the March 13, 1998 Water Quality Trading Workgroup Meeting

A list of workgroup members who were present at the third meeting is attached. Ms. Sreedevi Yedavalli, Region V United States Environmental Protection Agency participated by conference call. The summary of the February 9, 1998 meeting was approved without revisions. Several comments on the Draft 2 Rules were received prior to and at the meeting. Comments received from Mr. Bill Creal and Mr. Andrew Brenner are attached and have been incorporated into Draft 3 Rules which are also attached. Beginning with Draft 3 all previous strikethrough deletions and bold additions will be retained and italicized. The un-italicized strikethrough and bold format will be used for the most recent revisions to future drafts.

The questions of whether there will be room for trading once a total maximum daily load (TMDL) has been established and the definition of baselines (Brenner Comments, 3/4/98) will be brought up in the next meeting, which will be held on April 17, 1998. An agenda for the next meeting is attached.

The workgroup discussed several revisions and additions to definitions in Rule 1, Draft 2 Rules. The group decided to add a placeholder to define the term "nondomestic". Mr. Dan Dell (SWQD) agreed to look into whether definitions for specific conventional pollutants (BOD, COD, TSS, TKN) would be appropriate. Mr. Dell will provide recommendations to the workgroup at the next meeting. A suggestion was made to include "antidegradation" in Rule 2(a). This change was not adopted by the workgroup but may be incorporated in later drafts if necessary.

A question was raised on the methods that would be used to quantify loadings and reductions made to generate credits. A suggestion was made that the same methods and procedures used by point sources to determine compliance under existing regulations should be used to quantify reductions made to generate credits. The methods and procedures currently used to quantify, calculate or estimate nonpoint source loading would be used to quantify nonpoint source reductions made to generate credits. It was agreed that loadings/reductions would be expressed in units of mass rather than rate-based units. There was support within the workgroup for this approach.

The group also discussed the time periods for quantifying point and nonpoint source loading. The use of credits by point sources would be in units of mass (pounds) per month, or year corresponding to the compliance period specified in the permit. For example, a point source wishing to use credits to comply with a monthly phosphorus limit would have to purchase a quantity of credits for that month such that the actual pounds discharged minus the number of credits used equals the permitted limit. Agricultural nonpoint source loadings and reductions would likely be measured in pounds of pollutant per year, although a longer or shorter period may be appropriate depending on the site-specific management practices or controls implemented. Mr. Jeff Edgens (MFB) handed-out a "Framework for Agricultural Participation in a Water Quality Trading Program", dated 2/16/98 (attached). Mr. Edgens pointed out that the framework is under development and that comments on the draft are welcome.

The issue of "backsliding" was discussed in the context of the following scenario. Assuming that a point source has a water quality-based effluent limit of 10 in a permit and the source is actually discharging at 9. The source decided to reduce its discharge to 7 to generate discharge reduction credits to bank or sell. This voluntary reduction is made a legally enforceable limitation by the submission of a notice to generate credits for a specified period of time, say 2 years. After 2 years, the source decides to stop generating credits and utilize the full permitted discharge of 10. Does this constitute "backsliding"? SWQD staff and other members of the workgroup agreed that this would not constitute backsliding since the effluent limitation in the permit was never modified. It was pointed out that federal backsliding regulations use the term relaxation of a permit limit and that environmental groups may take the position that this would constitute backsliding. The distinction made by the workgroup was that voluntarily reducing a discharge to generate a credit

was a "trading obligation" not a "permit obligation". EPA was asked to take this question under advisement and provide an interpretation at the next meeting.

The question of backsliding was also raised in the context of federal phase I and phase II storm water regulations. EPA policy (Perciasape Memorandum, \_\_\_\_\_) calls for the use of designated best management practices to establish a limit for storm water control programs. Would a change in the mix of BMP's designated in a storm water management program contained in a permit constitute "backsliding"? EPA was also asked to respond to this question.

It was pointed out that many industrial sources in the paper industry and a number of other industrial and commercial sources have already implemented pollution prevention. The question was asked if these sources would in effect be penalized for having made reductions before trading rules are established or whether credit could be given? The discussion included: whether trading credits should be given for changes which resulted in a direct economic benefit, whether credit should be given for changes that a company would have made anyway, and the possibility of providing a window of discounted eligibility for voluntary reductions made prior to the effect of the rules. The workgroup did not make a decision on this issue.

Mr. David Hamilton, SWQD Chief, commented on the potential for water quality trading. David stated that monitoring to assess actual in-stream changes in water quality is critical. He observed that trading may be important to the implementation of watershed management plans, TMDL's and voluntary nonpoint source programs.

During the lunch break, EPA staff suggested that trading should be done to the extent possible within the context of the existing federal clean water act and regulations. Ms. Yedavalli also suggested that nonpoint source baselines should be established by modeling.

After lunch, the workgroup discussed Rule 5. Designation of watersheds, establishment of trading areas. Trading across large watersheds and sub-basins (Saginaw Basin) raised the issue of antidegradation. Would degradation of high quality waters occur if credits generated in the Shiawassee sub-basin were used by a source to comply with a water quality-based effluent limit in the trout water headwaters of another sub-basin. Questions were raised over what the "receiving waters" in this case would be and what the limit was for which credits would be used. A distinction was made between using credits to comply with a 1.0 mg/l limit established for protecting Saginaw Bay compared to a more restrictive limit established to protect localized water quality and designated uses. A copy of the Antidegradation exceptions was provided to the group. The group concluded that open water quality trading could occur in attainment areas where upstream reductions compensated for downstream increases such that there is a net reduction to the receiving waters. A special case was suggested by a workgroup member to allow open trading in marginal areas where water quality standards are being met, but the capacity of the receiving water has been fully allocated. SWQD staff agreed that open trading could occur here and that these areas could be designated. Mr. Creal agreed to provide a list of areas/pollutants for which open "maintenance" trading could occur. The use of credits in these areas and in attainment waters where upstream reductions for downstream uses occur, would not constitute antidegradation. This issue will be discussed further. Rule 5 in Draft 3 Rules has been revised by eliminating subrules (2) [hydrologic unit code basins] and (3) [Saginaw Basin]. Subrules (4) and (5) have been revised and combined. A new subrule has been added for the list of "designated waters" in which trading may occur. A new Rule 6 has been added to provide for the establishment of watershed management plans under which trading could occur.

The workgroup agreed to create two subgroups. Mr. Ted Staubuck and Ms. Kelly Cave (tentative) will review and provide recommendations for urban nonpoint source quantification protocols at the next meeting (if possible). The second subgroup was created to review and provide recommendations for agricultural nonpoint source quantification protocols. The members of this group include: Mr. Charlie Bauer, Mr. Mark Kieser, Mr. Chuck Cabbage and Mr. Jeff Edgens.

Ms. Grace Scott (SWQD) provided an overview of existing pretreatment program requirements and proposed changes to the federal regulations. After this presentation, the group discussed whether to pursue pretreatment trading. Mr. Joe Staph provided insights to the group based on experiences at the City of Wyoming publicly owned treatment works. Allocation schemes, property rights, pollutants to be traded (compatible versus metals, oil & grease and flow), monitoring and enforcement relative to pretreatment trading were discussed. Mr. Staph agreed to obtain input from other municipal POTW's and industrial users on the issue and provide a recommendation whether to include provisions for pretreatment trading.